

HORACE D. BENNETT.

JUNE 18, 1910.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. YOUNG, of Michigan, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany H. R. 21882.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 21882) to correct the military record of Horace D. Bennett, having considered the same, report thereon with a recommendation that it be amended as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That in the administration of any laws conferring rights, privileges, or benefits upon honorably discharged soldiers Horace D. Bennett, who was a second lieutenant of Company D, One hundred and fifth Regiment New York Volunteer Infantry, shall hereafter be held and considered to have been discharged honorably from the military service of the United States as a member of said company and regiment on the seventeenth day of October, eighteen hundred and sixty-two: *Provided*, That, other than as above set forth, no bounty, pay, pension, or other emolument shall accrue prior to or by reason of the passage of this act.

Amend the title so as to read, "A bill for the relief of Horace D. Bennett."

And as thus amended that the bill do pass.

An affidavit of the soldier and the record of the War Department are hereto attached and made a part of this report.

Statement of Horace D. Bennett, formerly first lieutenant of Company D, One hundred and fifth New York State Volunteers, for presentation to Congress with prayer for relief.

I went in the service of the New York State Volunteers in October, 1861; commenced recruiting a company for to form a regiment from Ontario County, to be commanded by E. Sherrill, who the next year went out commanding the One hundred and twenty-sixth Regiment.

We were mustered into the United States service with One hundred and fifth Regiment from LeRoy in March, 1862; our regiment numbered 960 men all told; we went to New York City, where we got our guns, and then to Washington, and from there

over into Virginia. I was first lieutenant in Company D; Captain Tichener, and Second Lieut. A. Field.

We were on guard duty, first the Orange and Alexandria Railroad, and drilling our men. In the earlier part of the season we went on a raid up to Thoroughfare Gap and to Front Royal and did picket duty all the season until the 1st of July, when the rebels came up into central Virginia. About the 1st of July the colonel commanding the regiment, Colonel Fuller, assigned me to the command of Company K. All the officers of the Company K being absent from the regiment, I continued in command of the company until I left the regiment, in October.

I was in command of Company K on every march the regiment made during the fighting campaign.

I was present and in command of Company K at the battle of Cedar Mountain, Rappahannock Station, Thoroughfare Gap, Bull Run, and Chantilly, and at no time was absent from my command nor on any march the regiment made until just before the battle of South Mountain, and then finding I was unable to keep up with the regiment the surgeon of the regiment ordered me to the hospital at Washington September 7. Was discharged from the hospital September 15, started immediately for the regiment. There was no public way of travel and I had to walk. Overtook the regiment at Sharpsburg the night after the battle of Antietam; there were less than 300 men fit for duty. At the time I offered my resignation the regiment was making arrangements to consolidate with the Ninety-fourth Regiment, which it finally did, and the colonel, lieutenant-colonel, and most of the captains and the first lieutenants of the One hundred and fifth Regiment were mustered out of service.

The condition of my Company D was such that it did not need my service; there were less than 30 men for duty in company and the captain and second lieutenant were present for duty and one of the officers of Company K. My wife was sick. The doctor telegraphed that he did not have any hopes for her life. When I enlisted we had two children, one 5 years, the other 3 years old. Two months after I enlisted we had another child born. When I returned convalescent to my regiment and found the campaign over for the time being and that I could be spared, the letters from home, my wife's serious illness, my three little children, one of whom I had never seen, all seemed to me, justified my taking the position I did in offering my resignation.

I went in the service because I thought it a duty to my country, although there were so many reasons why I ought to stay at home and look after my family and other interests. But the call for every man to do what was in him for his country was the first duty and the next duty was to my family; I did it to the best of my ability while in the service. And no act of my life has given me more satisfaction to look back over my life than the time I was in the service of my country. I know I did my duty to the best of my ability.

When I offered my resignation and it came back a dishonorable discharge, I went to Washington to see what I could do to get an honorable discharge. I could find out nothing from the War Department. I went home and in March went back to Washington to get my pay and to get a hearing from the department. I received my pay March 12, 1863, but I could find out nothing of the reason of my dismissal. I had sent to the department the recommend of the One hundred and fifth Regiment officers, the colonel, the lieutenant-colonel, the major, the surgeon, the adjutant, the recommend of 8 of the 10 captains and of 13 of the lieutenants, as per copy of recommend sent to the department. I could not get a hearing. I spent over two weeks but could not get any hearing, and had to return home without any satisfaction. I heard nothing more until December 7, 1904.

Congressman Payne received from Military Secretary, the report that the record was that the name was dropped from the rolls because of lack of performance of duty and unauthorized absence.

It seems that in April, 1863, a military commission did consider the case, without notifying me or giving me chance to defend myself with the abundant testimony which I could and can now show that all the charges were false and not a shadow of truth in them. The first knowledge I had of the reason of my discharge was the letter from Congressman Payne in 1904. The Government gave me no notice of the hearing before military commission nor of its finding or decision.

There was no lack of patriotism in my father's family. My grandfather served in the Revolution. My father was in the war of 1812 and offered his services to President Lincoln in 1861. He was in Washington when the trouble commenced when Lincoln first came through Baltimore. There was one of my brothers went with me in the One hundred and fifth Regiment and two of my wife's brothers.

I attach hereto a copy of the statement of the officers of the regiment asking my reinstatement. The original is on file in War Department in Washington, D. C. Also a

copy of the statement by the surgeon of the regiment that I was unable to march farther with the regiment. This was written by him on horseback while on the march. Also copy of pass given. Also a copy of the surgeon's certificate that I was disabled. Also a copy of letter by Richard Whiteside, lieutenant-colonel in command of One hundred and fifth Regiment, as to my service and presence during battles (original is on file in the War Department). Also a copy of a letter by Captain Moore to General Rickets as to my service (original on file in the War Department). Also a copy of the letter to the Adjutant-General, a copy of the reply from the Assistant Adjutant-General, stating that my papers were lost. Also a copy of my resignation, approved by Richard Whiteside, in command of the One hundred and fifth Regiment, and followed by memoranda by Brigadier-General Duryee, which is the sole and only foundation for my discharge, and the contents of which I was never able to learn until February, 1910.

These are followed by the routine memoranda indorsing Duryee's position, and are all on file in the War Department. I never knew until February, 1910, who had made any report which was the foundation of my dismissal from the service, and it now appears that the only basis for the same was a loose and general statement made by General Duryee that I was absent from the fights, which was not true, as shown by the statement of all of the officers who had intimate knowledge, and that I was absent from the post without leave, which could only have referred to the ten days from the 7th to the 17th of September, 1862, authority for which absence is shown by the original papers now produced and which I have never before had an opportunity to present to any tribunal. Also copies of five letters written to my wife while on duty, and mostly while under fire, and dated, respectively, August 1, 8, 10, 11, and September 5, 1862. Also copies of letters from my friends and neighbors as to my integrity and life since the war.

I produce the originals of all of the aforementioned, except those stated to be on file. I further state that there was only one officer that could have had any feeling against me, and he seemed to be in close touch with Brigadier-General Duryee, and that was Augustus Fields, who was second lieutenant of Company D at this time, of which company I was first lieutenant, and his only grievance was because I used my influence to stop his being made captain.

This Mr. Fields had obtained a commission as captain, and the members of the company believed he had obtained the same by false statements as to his military knowledge, experience, and ability, and were much put out by the prospect of his being made captain over them, and I took it upon myself to go to Adjutant-General Hillhouse, of the State of New York, and Hon. Charles J. Folger, then state senator, with both of whom I was well and personally acquainted, and got the commission changed from that of captain to that of second lieutenant.

Brigadier-General Duryee had no knowledge of such statement as he has made and must have been misled by some one because the statement that I was absent from all fights and left my post without authority is false and the statement of the officers who had knowledge show it was false.

I desire to submit these facts and will be glad to appear for examination, as I have always been ready and anxious to do ever since my unjustified dismissal.

I swear that the above statement is in all respects correct and true.

HORACE D. BENNETT.

Sworn, etc., before me this 3d day of February, 1910.

HORACE W. FITCH.
Notary Public.

WAR DEPARTMENT,
THE ADJUTANT-GENERAL'S OFFICE,
Washington, March 18, 1910.

Respectfully returned to the honorable the Secretary of War, inviting attention to the inclosed report of this office dated March 18, 1910, setting forth the showing of the records of the office relative to the case of Horace D. Bennett as an officer of Company D, One hundred and fifth New York Volunteer Infantry.

For reasons substantially the same as those set forth in the indorsement of this office dated February 21, 1910, on House bill 20974 (61st Cong., 2d sess.), in the case of Edward M. Schmidt, second lieutenant, Company A, Twenty-fifth New York Cavalry, it is recommended that, if it is desired to enact any legislation in this case, the title of the pending bill (H. R. 21882, 61st Cong., 2d sess.) be amended to read "A bill for the relief of Horace D. Bennett;" that all after the enacting clause be stricken out, and that the following be inserted in lieu thereof:

"That in the administration of the pension laws Horace D. Bennett, who was first lieutenant of Company D, One hundred and fifth Regiment, New York Volunteer

Infantry, shall hereafter be held and considered to have been discharged honorably from the military service of the United States as a member of said company and regiment on the seventeenth day of October, eighteen hundred and sixty-two."

F. C. AINSWORTH,
The Adjutant-General.

[Second indorsement.]

WAR DEPARTMENT, *March 19, 1910.*

Respectfully returned to the chairman Committee on Military Affairs, House of Representatives, inviting attention to the preceding indorsement hereon, and to the accompanying report of The Adjutant-General of the Army, dated March 18th instant.

ROBERT SHAW OLIVER,
Assistant Secretary of War.

Case of Horace D. Bennett, late first lieutenant Company D, One hundred and fifth Regiment New York Volunteer Infantry.

Horace D. Bennett was duly appointed first lieutenant Company D, One hundred and fifth New York Volunteer Infantry, and he is recognized by this department as having been in the military service of the United States in that grade and organization from December 11, 1861. On the bimonthly muster rolls of the company to August 31, 1862, he was reported as present for duty.

He tendered his resignation in a letter, of which the following is a copy:

"FIRST BRIGADE, SECOND DIVISION,
"TWELFTH ARMY CORPS, ARMY OF VA.,
"CAMP NEAR SHARPSBURG, VA.

"*To the Officer Commanding the 105th Regt. N. Y. S. Vols.*

"SIR: In consequence of sickness in my family & my wife's continued failing health, it is absolutely necessary that I return to my family to care for her & three little children.

"I therefore tender to you my resignation as 1st lieut. of Co. D, 105 Regt. N. Y. S. Vol., hoping it will meet your approval.

"The same to take effect immediately.

"HORACE D. BENNETT,
"1st Lieut. Co. D, 105 N. Y. V."

The letter was forwarded through military channels with indorsements as follows:

[First indorsement.]

"Approved.

"RICHARD WHITESIDE,
"Capt. Co. A, Commanding 105th Regt. N. Y. V.

"Feeling as this officer does, he is of no use to the service."

Second indorsement.]

"HEAD QUARTERS 1ST BRIG. 2D DIV.,
"12 ARMY CORPS, ARMY OF THE POTC.
"Sept. 26th, 1862.

"Respectfully referred to Genl. Ricketts.

"Does scarcely any duty; absent at all the fights; pay recommended to forfeited; leaves the ranks without authority.

"A. DURYEA,
"Brig. Genl."

[Third indorsement.]

"HD. QRS. 2ND DIV. 12 CORPS,
"Sept. 26, 1862.

"Approved & submitted.

"JAMES B. RICKETTS,
"Brig. Gen. U. S. A., Comdg. Div."

[Fourth indorsement.]

"HD. QRS. 1ST ARMY CORPS,
"Sept. 27/62.

"The statement of Genl. Duryea does not permit my approval of the acceptance of the resignation of this officer. I would recommend his being dropped from the rolls.

"GEO. G. MEADE,
"Brig. Genl."

[Fifth indorsement.]

"HD. QUARTERS, ARMY OF THE POTOMAC,
"September 29, 1862.

"Respectfully forwarded to the Adjutant-General of the Army with the recommendation that the name of this officer be dropped from the rolls of the army.

"GEO. B. McCLELLAN,
"Maj. Genl. Comdg.
"By S. WILLIAMS,
"A. A. G."

[Sixth indorsement.]

"A. G. OFFICE, Octo. 7/62.

"Respectfully submitted to the Secretary of War, with the recommendation that this officer be dropped from the rolls of the army.

"E. D. TOWNSEND,
"Asst. Adjutant-General."

[Seventh indorsement.]

"Approved.

"By order of the Secretary of War.

"P. H. WATSON,
"Asst. Sec. of War.

"10 Oct., 1862."

Thereupon an order was issued from the War Department on October 17, 1862, in which it was announced that this officer was, by direction of the President, thereby dismissed the service of the United States, and pursuant to the terms of this order Lieutenant Bennett was separated from the military service of the United States as a member of the organization in question.

Following is a copy of a communication addressed to the President by former officers of the regiment:

"CAMP NEAR SHARPSBURG, MD., Oct. 27th, 1862.

"To His Excellency ABRAHAM LINCOLN,
"President, U. S. A.

"SIR: We, the undersigned officers of the 105th Regt., N. Y. S. Vols., do believe that Lieut. Horace D. Bennett is and has been a good soldier and a faithful officer. He has been with the regiment from its formation, was with it on all its marches, and fought with it in all engagements, unless the two last, which was at South Mountain & Antietam. He was sick at the time, and we believe unfit for duty. He had a regular leave to fall to the rear from our regimental physician. He has been dismissed the service for what we know not."

(The signatures of the captain of Company D and 12 other officers of the regiment are affixed to the above statement.)

In a communication dated at Washington, March 14, 1863, the officer requested that his case be investigated by a military commission with a view to his reinstatement or the issue of an honorable discharge in his case. Accompanying his letter is a statement bearing the signatures of the colonel of the regiment and 29 other officers thereof, as follows:

"HEAD QRS. OF THE 105TH REGT. N. Y. S. VOLS.

"Camp Near Belle Plaine, Va., March 7th, 1863.

"To His Excellency, ABRAHAM LINCOLN,

"President of the U. S.

"SIR: We, the undersigned officers of the 105th Regt. N. Y. S. Vols., desirous of expressing our confidence & esteem of Horace D. Bennett late a first lieut. of our regt., but for some cause to us unknown and still remains a mystery, he was dismissed the service on or about the 17th day of Oct. last, & we do hereby recommend that he be restored or receive an honorable discharge.

"The said Horace D. Bennett has always done his whole duty. He was present on all marches. He was also present and in command of Company K at the battle of Cedar Mountain, Rappahannock Station, Thoroughfare Gap, Bull Run, & Chantilla, and at no time was he absent from his command until just previous to the battle of South Mountain, and then only after finding himself unable to go further with his regt., and obtaining a Surgeons certificate to fall to the rear, he being physically unable to proceed further with the regt."

The papers in the case were thereupon referred to a military commission which considered the military record of the officer together with papers, copies of which are as follows:

"WILLARD'S HOTEL,

"Washington, D. C., March 18, 1863.

"BRIG. GENL. RICKETS.

"SIR: Horace D. Bennett who came with me into the service as my first lieut. and who was dismissed from the service Oct. 17, 1863, was with me during all the marches of the regiment up to about the middle of July, when he was assigned to the command of Co. K of the same regiment. From personal observation I know that he was with that company until after we left Virginia and went into Maryland. During that tedious march to South Mountain he fell out, but up to this time I know he was constantly in the discharge of his duty.

"I believe that justice to him requires that I should make this statement, it being all the facts with which I am familiar.

"I am, sir, very respectfully, your obedient servant,

"ISAAC S. TICHENOR,

"Capt. Co. D, 105th N. Y. Vol.

"BRIG'D GENL. RICKETTS.

"WASHINGTON, March 22d, 1863.

"I hereby certify that Lt. H. D. Bennett, Co. D 105th N. Y. Vols., was with his company and on duty at all times from the organization of his Co. to the 15th day of July, at which time he was assigned to the command of Co. K. I left the regmt. on the 17th July on account of sickness and joined my regt. again on the 4 or 5 of Sept. Lt. Bennet was then in command of Co. K and on duty at that time on the march through Md. He was not able to keep up and had surgeon's certificate to fall to the rear.

"JOHN W. SHEDD,

"Col. 105th N. Y. V."

"WASHINGTON, D. C., March 23d, 1863.

"GENERAL: I take pleasure in having an opportunity of certifying to the good military character of H. D. Bennett, formerly 1st lieut. of Co. 'D,' 105th regt. N. Y. Vols.

"From the organization of the regiment to the early part of Sept., 1862, Mr. Bennett was constantly on duty during our marches and upon the field of battle. From about the middle of July, 1862, until the time of his dismissal he was in command of Co. 'K,' 105th N. Y. V., faithfully leading it through all the battles of Genl. Pope's campaign.

"I am ignorant of the charges upon which he was cashiered, but whatever they were they were false as far as they cast a slur upon his character as a gentleman and a soldier.

"Yours, most resp.,

"JOHN I. WHITE,

"*Ex-Adjutant, 105th N. Y. V.*

"To Brig. Genl. RICKETTS,

"*Prest. Military Com., Washington, D. C.*"

"WASHINGTON, D. C., *March 23, 1863.*

"I certify that Lieut. Horace D. Bennett was with his regt. from its organization up to the 7 of Sept., 1862. He was in the battles of Cedar Mountain, Rappahannock Bridge, Thoroughfare Gap, & Bull Run, and behaved well. I always respected him as an officer and a gentleman, and whose courage and bravery I never doubted. He was taken sick on the march through Maryland, fell to the rear by order of Dr. Chamberlain, our regimental surgeon. I was in command of the regt. at the time Lieut. Bennett tendered his resignation, and from a personal knowledge of letters I saw coming from his home, I am of the opinion he was justified in doing as he done. He has been dismissed the service, for what I know not and have yet to learn, as I recommended him to be honorably discharged.

"RICHARD WHITESIDE,

"*Lieut. Col., 105 Regt. N. Y. V.*"

"WASHINGTON, *March 23d, 1863.*

"I certify that Horace D. Bennett, late a lieut. in Co. 'D,' 105th Regt. N. Y. Vols., was with his regiment during all marches and in all engagements during the campaign in Virginia, in the summer of eighteen hundred and sixty three, and upon no occasion was he absent from his command until on or about the twelfth or fifteenth of September, when, being unable to proceed farther with his regiment, he obtained a certificate from the surgeon and fell to the rear.

"THOS. A. STEADMAN,

"*Late Capt. Co. 'C,'*

"*105th Regt. N. Y. Vols.*"

After mature deliberation, the commission did not recommend that the officer in question be restored to the service, and the action of the board received the approval of the Secretary of War on April 9, 1863.

Inasmuch as the order of dismissal of this officer was actually carried into execution, it is beyond the power of the War Department or of any executive officer of the Government to revoke, modify, or set it aside, however unmerited or injudicious it may be deemed to have been, or to grant to this officer an honorable discharge from the service.

Respectfully submitted.

F. C. AINSWORTH,
The Adjutant-General.

WAR DEPARTMENT,

The Adjutant-General's Office,

March 18, 1910.

The SECRETARY OF WAR.

